DD/M&S 74-0529

12 FEB 1974

EB/MBS Registry
MB Legal

MEMORANDUM FOR: Legislative Counsel

ATTENTION : [redacted] STAT

SUBJECT : S. 1726, A Bill to Amend the Freedom of Information Act

1. Pursuant to your request of 4 February 1974, we have reviewed your draft memorandum to Senator Ervin and have rewritten it to include some additional data and some minor editorial changes.

2. Please advise if we can be of any further assistance in this matter. STAT

[redacted]

Howard J. Osborn
Director of Security

cc: C/ISAS
EO-DD/M&S

DRAFT

Honorable Sam J. Ervin, Jr., Chairman
Senate Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Chairman Ervin:

This is in reply to your letter dated 11 May 1973, requesting our views concerning S. 1726, which establishes guidelines and limitations for the classification of information and the disclosure of such information to the Congress and the public.

S. 1726 establishes a statutory program for the classification, declassification, and protection of Government information by amending the Freedom of Information Act. Except for Restricted Data, all classified information, including intelligence sources and methods, would be affected.

The Central Intelligence Agency clearly recognizes that all elements of our Government and the electorate must be adequately informed on matters of national importance. However, there are certain considerations that must be borne in mind. The role of CIA is to provide support to the President and the National Security Council by maintaining a coordinated, effective and timely

collection and analysis program covering foreign intelligence. The success of the program is dependent upon productive sources and effective methods of collection and analysis which meet national requirements. If security is not properly regarded and sources and methods are revealed, the foreign intelligence effort would be critically affected. This was recognized by the Congress in the National Security Act of 1947, as amended, (50 U.S.C.A. 403), Section 102(d)(3), which provides as follows:

> "...And provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

The Agency, under the present Freedom of Information Act and Executive Order 11652, has established a program to handle outside requests for information. Disclosures under the Act and Executive Order, however, have admittedly been limited because of the necessity to protect intelligence sources and methods and other considerations affecting Agency operations. The passage of time alone for declassification does not always provide adequate protection. Therefore, every classified document which might disclose intelligence sources and methods must be carefully reviewed prior to a declassification decision. Disclosures of information revealing past activities can well jeopardize present and future operations and individuals. This

review, therefore, is extensive and includes all related and corollary information affected by the disclosure.

The existing Freedom of Information Act provides protection to intelligence sources and methods by expressly exempting classified information. We question whether the much broadened program of declassification and dissemination to be established by S. 1726 is consistent with the protection of the information involved.

Section 104 provides for the automatic declassification of information unless the President or agency head personally and in detail justifies, in writing, that the information requires continued protection. The justification is not delegable and must be submitted to the Comptroller General and to the Government Operations Committees of House and Senate for review by any member or committee of Congress. No classified information may be withheld from any member or committee of Congress. Any person may bring court action and require a court review de novo of the sufficiency of the classification of any material deferred from declassification. Noncompliance with a court order subjects an agency head to contempt.

The above provisions in Section 104 clearly conflict with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods and raise our strong objection to S. 1726. The Director could be

faced with a court order to declassify intelligence overriding his determination that disclosure would reveal sources and methods. Regardless of the outcome of the court action, sensitive information would be disclosed in open court. Also, anyone can petition court action to force disclosure of any classified information without showing any interest, whereas, the Government is forced to prove a national interest to protect the information involved.

There are other provisions in Section 104 of S. 1726 which also raise serious problems for this Agency. The more significant are:

a. The authority granted to the Comptroller General to oversee the protection of information in Government, investigate allegations of improper classification, and inspect Agency classification programs can conflict with the Director's statutory responsibilities.

b. Since much of our classified material involves sources and methods, its sheer volume would make it impossible for a Head of an Agency to personally justify in writing and in detail the reasons for continuation of classification every two years. Such a program would require an annual

review of hundreds of thousands of documents and the preparation of detailed justification for continuation of protection.

c. The requirement to furnish quarterly to the Comptroller General and upon request to any member or committee of Congress the names and addresses of all persons who have authority to classify information is in conflict with Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C.A. 403g) which exempts the Agency from the provisions of any law requiring the disclosure of the names of any of its employees.

d. The one designation "Secret Defense Data" by not recognizing any varying degrees of sensitivity will not provide adequate protection to the most sensitive information. A clearly recognized and understood classification such as "Top Secret" not only provides ready identification but aids in proper protective handling.

e. The requirement that individual paragraphs or segments of a document be identified as needing protection would create, in many cases, an intolerable administrative burden. Executive Order 11652

recognizes this problem and requires this be done only to the extent practicable.

For the above reasons, this Agency strongly opposes enactment of S. 1726. We offer no comments on other sections of the bill except to note that Title V - COMMUNICATIONS MEDIA PRIVILEGE would protect the identity of all persons furnishing any information to the media, including the foreign press, regardless of any indications of criminality in the acquisition of the information involved.

The Office of Management and Budget advises there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. E. Colby
Director

E.R. # 73-4108/A

DD/M&S 73-3012

31 JUL 1973

The Honorable Elliot L. Richardson
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

This Agency will be pleased to comply with the requests contained in your memorandum of 11 July 1973 concerning the Freedom of Information Act. We will continue to follow the instructions set forth in your Department's 8 December 1969 memorandum. Also, we shall insure that any future intention to issue a denial, contrary to the Freedom of Information Committee's advice, will be carefully reviewed at the highest level of the Agency.

Sincerely,

/s/ Vernon A. Walters

Vernon A. Walters
Lieutenant General, USA
Acting Director

ORIGINATOR:

/s/ Robert S. Wattles — 27 JUL 1973

Robert S. Wattles
Acting Deputy Director
for
Management and Services

Date

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OFFICE OF THE DIRECTOR

The Honorable Elliot L. Richardson
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Richardson:

With reference to your memorandum of 11 July 1973 to department heads concerning coordination under the Freedom of Information Act, this Agency of course will be glad to comply with your requests. We have been fully cognizant of your memorandum of 8 December 1969 and have been guided by it, and will continue to do so. In response to your paragraph 4, if in the future, after consulting with your Committee and receiving advice that we should not deny a request under the Freedom of Information Act, the responsible officials nevertheless propose to deny, this Agency will accomplish the denial only after speedy and careful review at the highest level of the Agency.

Sincerely,

Vernon A. Walters
Lieutenant General, USA
Acting Director

DD/M&S 73-3012

The Honorable Elliot L. Richardson
Attorney General
Department of Justice
Washington, D. C. 20530

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Sincerely,

Vernon A. Walters
Lieutenant General, USA
Acting Director

STAT

OGC [redacted] (26Jul73)
Retyped:SAIC:GFD:bec (26 Jul 73)
Distribution:
Orig - Adse
1 - OGC w/basic
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TRANSMITTAL SLIP	DATE
	27 July 1973

TO:

DDM&S

ROOM NO.	BUILDING

REMARKS:

FROM:

OGC

ROOM NO.	BUILDING	EXTENSION
7 D 07	Hqs	

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

	UNCLASSIFIED		CONFIDENTIAL		SECRET

OFFICIAL ROUTING SLIP

STAT

TO	NAME AND ADDRESS	DATE	INITIALS
1	[redacted]		
2	2E-42, HQ.		
3			
4			
5			
6			

	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

Herewith the suggested reply to the Attorney General for the signature of the Acting Director. Also attached, FYI, is a copy of the AG's memo of 8 December 1969.

STAT

[redacted]

STAT

[redacted]	AND PHONE NO. 7521		
	OGC 7D07		25 July
UNCLASSIFIED	CONFIDENTIAL		SECRET

(40)

FORM NO. 237 Use previous editions

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

The Honorable Elliot L. Richardson
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Richardson:

With reference to your memorandum of 11 July 1973 to department heads concerning coordination under the Freedom of Information Act, this Agency of course will be glad to comply with your requests. We have been fully cognizant of your memorandum of 8 December 1969 and have been guided by it, and will continue to do so. In response to your paragraph 4, if in the future, after consulting with your Committee and receiving advice that we should not deny a request under the Freedom of Information Act, the responsible officials nevertheless propose to deny, this Agency will accomplish the denial only after speedy and careful review at the highest level of the Agency.

VERNON A. WALTERS
Lieutenant General, USA
Acting Director

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TO:		ACTION	INFO	DATE	INITIAL
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6	DDM&S	✓		7-23-73	
7	D/DCI/IC				
8	D/ONE				
9	OGC		✓		Ridg.
10	OLC				
11	IG				
12	D/PPB				
13	D/Pers				
14	D/OS				
15	D/Trng				
16	SAVA				
17	ASST/DCI				
18	AO/DCI				
* 19	SAIC	✓			
20					
21					
22					
	SUSPENSE	27 July			
		Date			

Remarks:

Please prepare brief talking paper/chronological for Gen Walters signature

Executive Secretary

20 July
Date

* 6 to 19: Please note suspense date set by Evans - DDO

STAT

EO-DD/M&S [redacted] (23 Jul 73)

Distribution:

Orig RS - SAIC w/O of Att (DD/M&S 73-2936)

1 - DD/M&S Subject w/Xcy of Att

DD/M&S 73-2936: Ltr dtd 11 Jul 73 to Heads of All Federal Depts and Agencies fr Elliot L. Richardson, Attorney General, re: Coordination of Certain Administrative Matters under the Freedom of Information Act, 5 U.S.C. 552. 1/

Office of the Attorney General
Washington, D. C.

DD/M&S 73-2936

July 11, 1973

MEMORANDUM TO HEADS OF ALL
FEDERAL DEPARTMENTS AND AGENCIES

Re: Coordination of Certain Administrative Matters under the Freedom of Information Act, 5 U.S.C. 552. 1/

A matter of government-wide importance, and increasing interest in Congress, is the need for improved administration of the Freedom of Information Act. In this memorandum I wish to bring you up to date on several actions which the Justice Department is taking (Part I), and to request your assistance on one of these actions (Part II).

1/ The Freedom of Information Act provides for the compulsory disclosure upon the request of "any person" of all agency records not exempted by the Act, confers administrative responsibility on each agency with respect to its own records, and makes the agency's final decisions subject to judicial review, in which the agency has the burden of justifying denials of access. The Department of Justice conducts litigation in defense of agency determinations under the Act and furnishes certain advisory and other services. Most of the Department's litigation functions in this area are conducted by the Civil Division, and the advisory and other functions are conducted by the Office of Legal Counsel.

I.

On June 26, 1973 I testified before three Senate subcommittees holding joint hearings on various bills pertaining to the general subject of government secrecy. A major portion of my testimony was directed toward S. 1142, a bill to amend the Freedom of Information Act. A companion House bill, H.R. 5425, had been the subject of hearings on May 8th, at which we were asked to testify on behalf of the Administration and opposed most of the proposed amendments.

During my June 26th testimony, while reiterating our opposition to most of the proposed amendments, I gave major emphasis to our determination to act on the well-publicized and recurrent problems of inadequate disclosure which stimulate such proposals, stating that "the real need is not to revise the Act extensively but to improve compliance." After summarizing some of the causes of less-than-ideal compliance and some of the means we are considering to upgrade it, I announced four steps which the Justice Department will take immediately, as follows:

> "First, we will request the Civil Service Commission to include Freedom of Information material in its executive training and legal training programs and to assist us in arranging

for inclusion of similar material in other programs for training government personnel.

"Second, we will conduct an interagency symposium on the Freedom of Information Act before the end of this year, to emphasize the need for improved administration and to provide the wider sharing of problems and ideas. This symposium will involve two-way communications as well as direct presentations, and we plan to invite the participation of Congressional and private speakers.

"Third, we will promptly institute discussions with the Administrative Conference of the United States, the Civil Service Commission, the Office of Management and Budget, and perhaps other agencies, seeking their assistance in launching a comprehensive study of how the Executive Branch can better organize itself to administer the Act, both within and among the agencies. This study will cover staffing, budgeting, training, and meeting the need for research in the application of the Act to major areas like government procurement, regulatory programs, law enforcement, and computerized records. It will cover the extent to which desirable improvements should be effected by legislation, executive order, or departmental orders. It will take account of inputs from outside the Executive Branch, and it is designed to point the way to sound and relatively permanent improvements, including greater speed of processing, greater uniformity, and greater disclosure. Our objective will be to have this study launched within 90 days and completed within one year, with reports to be furnished to Congress.

"Fourth, I will immediately remind all federal agencies of this Department's standing request that they consult our Freedom of Information Committee before issuing final denials of requests under the

Act. In this connection I will order our litigating divisions not to defend freedom of information law suits against the agencies unless the Committee has been consulted. And I will instruct the Committee to make every possible effort to advance the objective of the fullest responsible disclosure."

II.

We wish to implement the fourth action set forth above with the maximum understanding and the least friction possible. There is a major need for closer coordination in the freedom of information field, and it is the responsibility of the Department of Justice to provide that coordination.

Your attention is invited to our standing request on this subject, originally set forth in this Department's December 8, 1969 memorandum to the general counsels of all federal departments and agencies, as follows:

> "We request that in the future you consult this Department before your agency issues a final denial of a request under the Freedom of Information Act if there is any substantial possibility that such denial might lead to a court decision adversely affecting the government. Such consultation . . . may also enable us to assist you in reaching a disposition of the matter reasonably satisfactory both to your agency and to the person making the request."

In this 1969 memorandum, the Department also announced the establishment and initial membership of a committee of lawyers in the Office of Legal Counsel and the Civil Division, now known as the Freedom of Information Committee, to conduct

such consultations. 2/ Up to the present, the Committee has conducted more than 200 consultations with agencies, and its work has been conducted with speed and informality. 3/

We would very much appreciate it if you would arrange to make sure that the appropriate persons within your agency are aware of our standing request, as just discussed. In addition, it would be most helpful to the overall government objective of the fullest responsible disclosure if your agency could make special provisions, if none now exist, for speedy and careful review at the highest agency level in any cases in which officials of your agency, after consulting the

2/ The current membership of the Committee is Robert L. Saloschin, ext. 2674, chairman, John Gallinger, ext. 2038, and Deputy Assistant Attorney General Leon Ulman, ext. 2051, chairman ex officio, all of the Office of Legal Counsel, and Jeffrey Axelrad, ext. 3300 and Walter Fleischer, ext. 3354, both of the Civil Division. The Committee maintains cooperative arrangements with the Tax Division, which handles litigation under the Act involving Internal Revenue Service records, under which that Division screens proposed final denials of such records and refers them to the Committee in cases of doubt which may affect agencies in addition to the Service.

3/ For a brief description of the work of the Committee by its chairman, see 23 Admin. Law Rev. 147. For a recent discussion of its work, see House Report No. 92-1419 on the Administration of the Freedom of Information Act (the "Moorhead Report") of September 20, 1972 at pp. 66-69.

Committee and receiving advice to the contrary, adhere to an intention of issuing a final denial.

Please feel free to call us if you have any questions about the foregoing. We hope that through the procedures and actions mentioned in this memorandum, and through exchanges of experience and views on problems of common interest, the administration of the Act can be steadily and significantly improved, to the ultimate benefit of each agency, the entire government, and the public.

Elliot L. Richardson

Elliot L. Richardson
Attorney General

OGC Subject: FREEDOM OF INFORMATION

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

Reply to the Indicated Initials and Number

December 8, 1969

MEMORANDUM TO GENERAL COUNSELS OF
ALL FEDERAL DEPARTMENTS AND AGENCIES

Re: Coordination of Certain Administrative Matters under the Freedom of Information Act, 5 U.S.C. 552.

Distribution List

The attached document is being distributed to the following:

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hington, D. C. 20506

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ice of Economic Opportunity
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hington, D. C. 20506

Department of the Treasury

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Department of the Treasury
Washington, D. C. 20220

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of the Currency
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Washington, D. C. 20220

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U. S. Secret Service
Washington, D. C. 20226

Counsel
Bureau of the Mint
Washington, D. C. 20226

Chief Counsel
Internal Revenue Service
Washington, D. C. 20224

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated
Refer to Initials and Number

December 8, 1969

MEMORANDUM TO GENERAL COUNSELS OF
ALL FEDERAL DEPARTMENTS AND AGENCIES

Re: Coordination of Certain Administrative Matters under the Freedom of Information Act, 5 U.S.C. 552.

The Freedom of Information Act, providing for compulsory disclosure of agency records not exempted by the Act, confers administrative responsibility on each agency and makes the agency's final decisions subject to judicial review. The Department of Justice conducts litigation in defense of agency determinations under the Act and furnishes certain advisory and other services pertaining to Freedom of Information problems. In general, the Department's litigation functions in this area are conducted by the Civil Division, and the advisory and other functions are conducted by the Office of Legal Counsel.

In discharging these functions, the Department has noted several developments which we believe warrant your

attention. First, the government in recent months has lost cases in court which involved a number of the exemptions contained in the Act. Consumers Union v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. July 10, 1969) (involving exemptions 2, 3, 4 and 5); General Services Administration v. Benson, 415 F. 2d 878 (9th Cir. Aug. 26, 1969) (exemptions 4 and 5). Second, there has been considerable variation in agency practices with respect to consulting the Department on Freedom of Information controversies before the agency takes final action which may result in the filing of suit against the agency. Third, there are particular problem areas under the Act which are common to a number of agencies, where an exchange of views may be beneficial.

The implications of the judicial decisions cited above, as well as other cases, are under continuing review in the Department. However, enough review has already been accomplished to point to two conclusions: (1) Although the legal basis for denying a particular request under the Act may seem quite strong to an agency at the time it

elsewhere finally to refuse access to the requested records, the justification may appear considerably less strong when later viewed, in the context of adversary litigation, from the detached perspective of a court and from the standpoint of the broad public policy of the Act; (2) An agency denial leading to litigation and a possible adverse judicial decision may well have effects going beyond the operations and programs of the agency involved, insofar as it creates a precedent affecting other departments and agencies in the Executive Branch.

In view of the foregoing, it seems manifestly desirable that, in most instances, litigation should be avoided if reasonably practicable where the government's prospects for success are subject to serious question. This can often best be done if, before a final agency rejection of a request has committed both sides to conflicting positions, the matter is given a timely and careful review, in terms of litigation risks, government-wide implications, and the policy of the Act, as well as the agency's own interests. To facilitate review of the nature just described, we need your cooperation. To

improve cooperation on our part, we have just established an informal committee of representatives of the Civil Division and of the Office of Legal Counsel.[1/] The functions of this committee will be to assist in such review and help assure closer coordination in our work.

We request that in the future you consult this Department before your agency issues a final denial of a request under the Freedom of Information Act if there is any substantial possibility that such denial might lead to a court decision adversely affecting the government. Such consultation will serve the review function discussed above, and in some instances may also enable us to assist you in reaching a disposition of the matter reasonably satisfactory both to your agency and to the person making the request. The requested consultation may be undertaken

1/ The members of this committee as of now are: Jeffrey F. Axelrad, Civil Div., ext. 3300; Robert V. Zener, Civil Div., ext. 3354; Steven P. Lockman, Office of Legal Counsel, ext. 2039; and Robert L. Saloschin, Office of Legal Counsel, ext. 2674, chairman. Deputy Assistant Attorney General Thomas E. Kauper, Office of Legal Counsel, ext. 2051, will be chairman ex officio.

formally or informally as you prefer, and ordinarily should be directed initially to the Office of Legal Counsel rather than to the Civil Division.

As regards the third development under the Act noted near the beginning of this memorandum -- the emergence of certain problem areas common to several agencies on which exchanges of view and experience may be mutually beneficial -- there is one such area warranting mention at this time. This area consists of various questions as to the availability of information on the testing of manufactured and other products (including such items of information as the identity of the maker or supplier, brand names, models, generic descriptions, test criteria, test procedures, test results, comparative ratings, limitations pertaining to products or characteristics not tested, etc.). If the activities of your agency involve testing or information pertaining thereto, we would welcome any statements of experience, policies or views which you may care to provide. Such statements may prove use-

ful to other agencies engaged in similar activities and to this Department in representing or counseling such agencies.

It is our hope that through the consultation and review procedures outlined above and through exchanges of experience and views on problems of common interest, positive benefits will accrue to individual agencies, the government as a whole, and the public.

Please feel free to call us if you have any questions about the foregoing.

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

William D. Ruckelshaus
Assistant Attorney General
Civil Division

☐ UNCLASSIFIED ☐ INTERNAL USE ONLY ☐ CONFIDENTIAL ☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

S. 1726, Freedom of Information Act Amendments of 1973 STAT

FROM:	EXTENSION	NO.
Director of Security Room 4 E 60		DDM&S Registry File Legal
		DATE STAT

TO: (Officer designation, room number, and building)	RECEIVED	FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Special Assistant for Information Control, DDM&S				1-2 STAT This office endorses the observations made by the OGC and the OS. Compliance with the provisions of E.O. 11652 is difficult enough, but implementation of the legislation here proposed would pose an almost impossible burden (e.g., positive action would be required to retain the protection required for the hundreds of thousands of classified records produced each year, and this action would have to be repeated at two-year intervals--with the number of documents affected growing each year). Protection of sensitive sources and methods is fundamental to the successful operation of an intelligence organization. It is somewhat ironic that the very legislation which would make protection of sources difficult for government agencies recognizes the right of newsmen to withhold such information from public disclosure. SAIC STAT
2. Legislative Counsel Attn:				
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FORM 610 USE PREVIOUS

DD/M&S 73-2625

27 JUN 1973

STAT

MEMORANDUM FOR: Legislative Counsel

ATTENTION : [redacted]

THROUGH : Special Assistant for Information Control, DDM&S

SUBJECT : S. 1726, Freedom of Information Act Amendments of 1973

REFERENCE : OLC 73-0570, 13 June 1973

1. Reference is made to your request for suggestions which would serve as a basis for an Agency position in response to Senator Ervin's request for the Director's views and recommendations concerning S. 1726.

2. On pages 3 and 4 the proposed bill authorizes a single classification, i.e., Secret Defense Data. This category is defined as any official information on material the unauthorized disclosure of which may reasonably be expected to cause damage to the national defense. Such material may be so classified only if its unauthorized disclosure would adversely affect the ability of the United States to protect and defend itself against overt or covert hostile action. We prefer the current classification categories, established earlier by Executive Order and continued by Executive Order 11652, because there are different degrees of damage which could result from unauthorized disclosures. In the case of TOP SECRET information such damage is defined as exceptionally grave while SECRET is defined as serious and CONFIDENTIAL is the same as proposed in the bill, i.e., "may reasonably be expected to cause damage." The current breakdown permits better control of documents for protection and accountability purposes, i.e., dissemination of TOP SECRET information is more restricted and protected than that of CONFIDENTIAL information. We do not believe that the use of routing indicators as proposed in the bill is as efficient or reliable as the present system.

3. On page 7 the bill requires that a complete list of the names and official addresses of all individuals within an agency authorized to classify be submitted quarterly to the Comptroller General of the United States and that copies of such lists be made available upon written request to any Member of Congress or any Committee thereof. This appears to be in conflict with Section 6 of P.L. 110 wherein we could protect against the disclosure of the names and titles of people employed by the Agency. This is, of course, important to our people under cover.

4. Pages 7 and 8 require that documents designated as Secret Defense Data should indicate the names and titles of the individuals who classified the documents. This also would conflict with Section 6 of P.L. 110. We would prefer our current procedure, i.e., the employee serial number.

5. Page 8 requires that paragraphs or other separate segments of a document be marked to indicate whether they are classified or unclassified. This would create an intolerable burden on those offices which create large numbers of documents containing both classified and unclassified segments. As you know, Executive Order 11652 requires that this be done only to the extent practicable.

6. Pages 8 and 9 require that information or material classified by and furnished to the United States by a foreign government or international organization must be released to any Member of Congress or Committee thereof upon written request. It prohibits the United States from classifying such a document unless its unauthorized disclosure could reasonably be expected to cause damage to the national defense or to the defense of the foreign government. We object to this proviso on two grounds: (1) foreign governments or international organizations would be reluctant to release documents containing very sensitive information if they were to be made available to any Member of Congress who desires them, and (2) the foreign government or international organization would be reluctant to permit a representative of the United States from making the determination as to whether the unauthorized disclosure would affect their national defense. They obviously prefer to make that decision.

7. Pages 10 through 12 provide that documents should be declassified automatically after two years unless the appropriate Agency head determines that the material is of such sensitivity and importance to continue its classification. For each item, the classification of which is to be

continued, the head of the Agency must submit in writing to the Congress and the Comptroller General a detailed justification for such continued classification. This would place an intolerable administrative burden on those agencies which classify a large volume of documents which require more than two years' protection and would be difficult for the Congress and the Comptroller General to process.

8. Page 13 permits a district court to overrule the decision of the Agency head to defer automatic declassification. This would hinder the Director in his responsibility to protect intelligence sources and methods.

9. On page 15 the bill grants the Administrator of General Services declassification authority for such classified data as has been transferred to the General Services Administration in order to be placed in the Archives of the United States. This proviso again would be in conflict with the statutory responsibility of the Director to protect sources and methods.

10. On page 17 the bill authorizes the Comptroller General of the United States to audit and investigate complaints. This proviso is also in conflict with the sources and methods proviso in Section 6 of P.L. 110.

11. On page 18 the bill prohibits any person from withholding information or material from the Congress. This provision would presumably permit the Congress to subpoena any of our employees and prohibit them from withholding any information or material even over the objection of the Director.

12. Please advise if any additional data are desired.

[redacted] STAT

Director of Security

DD/M&S

STAT

OGC 73-1063

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ROUTING AND RECORD SHEET

DD/M&S Registry File Legal

STAT

SUBJECT: (Optional)

FROM: [redacted] 7D35

EXTENSION [redacted]

NO. OLC 73-0570

DATE 13 June 1973

STAT

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. OGC	6/14	6/15		Senator Ervin has requested the Director's views and recommendations concerning S. 1726, which has been sent to you previously. The bill is rather comprehensive and attached is a listing of points which we have noted concerning the bill which could serve as a basis for an Agency position. We would appreciate your suggestions.
2.				
3. DD/M&S		6/20	LDP	
4.				
5. D/Security				
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Your action. Please coordinate wit[redacted] as appropriate.

LDP

Suspense: 27 June 1973

Att: S. 1726, Public Information Act of 1973; listing of points which could serve as basis for Agency position

Distribution of RS:
Orig - D/Sec w/att
1 - DD/M&S Subject w/att
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EO-DD/M&S [redacted] bkf (20 Jun 73)

FORM 3-62 610 USE PREVIOUS EDITIONS ☐ SECRET

S. 1726

PUBLIC INFORMATION ACT OF 1973

Title I

The essential point of the bill for the Agency is whether existing statutory exemptions protect all equities. If this is the case, then the bill has no effect on the Agency. Therefore, the effect of the title on the Agency depends upon the answer to this important question. Unfortunately, the same would not necessarily be true with any other elements of the intelligence community save AEC and NSA.

Pg. 2, L. 21:

Sec. 103(3)--"foreign policy" is wiped out as a basis for exempting information from the Freedom of Information Act under 4(b)(1) of 5 U. S. C. 552. (Note: old 4(b)(3) is not affected. Thus, under section 6 of P. L. 110, for example, we could protect against the disclosure of organization, functions, names, titles, salaries, and number of people employed in the Agency. The real question is whether "intelligence sources and methods" provisos constitute a further and fully satisfactory specific statutory exemption from disclosure.)

Pg. 3, L. 17-22:

Emphasis on the legislation is not to protect properly classified information from unauthorized disclosure.

3-25

Pg. 4, L. 2-6:

~~4,5 - 21-11~~

Sources and methods would also appear to be protected under "Secret Defense Data" if disclosure would adversely affect the ability of the U. S. to protect itself against hostile action.

Pg. 4, L. 4:

Change the word "would" to "could" ?

4, 5 - 21 ...

7 - 16/22

Pg. 7, L. 10-15:

This would conflict with existing law, e.g., section 6 of P.L. 110.

Pg. 8, L. 4-11:

This would conflict with existing law, e.g., section 6 of P.L. 110.

Pg. 8, L. 20 et seq.:

Information provided by foreign government would be made available to any Member. (Note: the criteria for classification, "could reasonably be expected to cause damage to the national defense," is less rigid than for U.S. originated material, pg. 4, L. 4.)

Pg. 10, L. 1:

"or can no longer be protected against unauthorized disclosure"--this means an illegal act brings about official "declassification."

Pg. 11, L. 21 et seq.:

Regarding deferral of automatic declassification, this would result in reporting in possible conflict with the necessity to protect intelligence sources and methods. It appears to place an almost unbearable burden upon the head of an agency if a number of items are involved, even though latitude is given in setting ultimate declassification date, pg. 13, L. 3-4.

Pg. 13, L. 13 et seq.:

Eventually could be tested as an unconstitutional invasion of the prerogatives of the President.

Pg. 14, L. 2:

Appears to upset the decision in the Mink case.

Pg. 15, L. 25 et seq.:

Any custodian of classified information may at any time recommend immediate declassification, although it is not clear what happens after the issue is joined.

Pg. 16, L. 6 et seq.:

Appears to be an infringement of the DCI's clear authority to issue regulations and to control the disciplining of Agency personnel. The Comptroller General's right to audit and investigate compliance, is in conflict with the intelligence sources and methods proviso in section 6 of P. L. 110.

Pg. 18, L. 15:

A similar exemption for CIA should be inserted at this point. This would leave the rest of the intelligence community subject to the act, however, and consideration should be given to extending protection to elements of the community.

Title II

Title II of the bill concerns increasing congressional immunity and would not be a proper subject for Agency comment, although note pg. 21, L. 25, that a Member informing the public on matters of local or national importance appears to be a completely protected area.

Title III

Title III concerns the Office of General Counsel of the Congress.

Pg. 23, L. 14:

Provides basis for civil action by any Member of Congress denied information.

Pg. 24, L. 19:

Conflicts with existing legislative oversight arrangements and with statutes protecting CIA information.

Title IV

Pg. 29, L. 20:

Concerning "privilege", among other things authorizes a Member and the General Accounting Office to obtain information unless "privilege" is resorted to within 15 days. In the case of a committee, the claim of privilege may be overruled by vote and continued refusal may subject the offender to contempt of Congress and other civil action (pg. 23, L. 18) which could include a number of actions including perhaps the loss of job, compensation, etc.

Pg. 30, L. 18 et seq.:

Protects "advice" but not the basis of advice (NIE) from action under this title.

Title V

Title V, concerning communications media privilege, is generally beyond the purview of the Agency for comment. The lack of specificity in definition appears to spread a blanket of protection over almost everyone.

TRANSMITTAL SLIP	DATE
	27 July 1973

TO: Mr. Wattles

ROOM NO.	BUILDING

REMARKS:

Recommend your signature on the attached blue note and as originator on the letter.

LDP

FROM:

ROOM NO.	BUILDING	EXTENSION

FORM NO 241 1 FEB 55 REPLACES FORM 36-8 WHICH MAY BE USED. (47)